

No. 05-492 OCT 14 2005

In The OFFICE OF THE CLERK
Supreme Court of the United States

NATIONAL ADVERTISING CO.,
a Delaware corporation,

Petitioner,

v.

CITY OF MIAMI,
a Florida municipal corporation,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

**PETITION FOR A WRIT OF CERTIORARI
AND APPENDIX
VOLUME I, PAGES 1 to 188**

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QUESTIONS PRESENTED

In *Massachusetts v. Oakes*, 491 U.S. 576 (1989), and *Osborne v. Ohio*, 495 U.S. 103, 121 (1990), a majority of the Justices agreed that an overbreadth challenge to a criminal statute is not rendered moot by an amendment limiting the statute's criminalization of protected speech. This case presents the following related questions:

1. Is a facial First Amendment challenge to a city's outdoor sign licensing ordinance rendered moot by an amendment to the ordinance even though the city continues to enforce the challenged ordinance by requiring removal of signs that violate the challenged ordinance?

2. Does an owner of outdoor signs have standing to attack on First Amendment grounds parts of an ordinance that have not been applied to it where those provisions are inextricably intertwined with other provisions of the ordinance that were applied to require removal of the owner's signs?

**PARTIES TO THE PROCEEDING AND
CORPORATE DISCLOSURE STATEMENT**

The parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption. National Advertising Co. is wholly owned by Viacom Outdoor, Inc. which is wholly owned by Viacom, Inc. Therefore, there is no parent or publicly held company owning 10% or more of National Advertising Co.'s stock.

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INTRODUCTION

This petition seeks review of a decision of the Eleventh Circuit Court of Appeals holding that the City of Miami's amendment of an ordinance regulating outdoor advertising signs mooted a First Amendment challenge brought by National Advertising Company despite the fact that the City is continuing enforcement proceedings under the original ordinance to compel removal of 40 National outdoor advertising signs.

The Eleventh Circuit's decision rests on the mootness analysis of a plurality opinion of this Court in *Massachusetts v. Oakes*, 491 U.S. 576 (1989), which was expressly rejected by a majority of the Court in *Oakes*. Unfortunately, the Eleventh Circuit's reading of the *Oakes* opinion is not an aberration. In addition to the four separate occasions on which the Eleventh Circuit has ignored the majority opinion in *Oakes*, five other federal courts of appeals have done the same. Indeed, several federal district judges, at least one state supreme court, and noted constitutional scholars all have recognized that federal appellate courts have failed to follow the rule established by the *Oakes* majority. The Court should overrule the Eleventh Circuit's decision so that facial challenges to blatantly unconstitutional regulations of constitutionally protected speech cannot forever be avoided by tactical amendments improvised by municipalities to nullify litigation. To do otherwise would send a clear signal that the rule of law can be avoided by adjustments to legislation which do not pretend to correct, much less actually correct, fatal constitutional weaknesses that plagued the legislation in the first place.

Further, the decision, in derogation of opinions of this Court and other circuits, denies National standing to make a facial attack on provisions of the ordinance not directly applied to it, but integral to the ordinance nonetheless. The Eleventh Circuit's ruling fosters piecemeal litigation and ignores the fact that a successful assault on the constitutionality of the ordinance will yield the same result: invalidating the entire ordinance, including the provisions that were applied.

**CITATIONS OF THE OPINIONS
AND ORDERS IN THE CASE**

National Advertising Co. v. City of Miami, 287 F. Supp. 2d 1349 (S.D. Fla. Sept. 25, 2003) (App. 16), *rev'd*, 402 F.3d 1329 (11th Cir. Mar. 21, 2005) (App. 1).

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued a decision in this case on March 21, 2005. (App. 1). National filed a timely petition for rehearing or rehearing en banc on April 11, 2005. The Eleventh Circuit denied the petition on May 17, 2005. (App. 104). Justice Kennedy granted National through Friday, October 14, 2005, to file this petition. This Court has jurisdiction to review the judgment of the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amends. I and XIV (App. 106); all sections of the City of Miami Zoning Ordinance 11,000, as it existed when National filed its complaint below, that regulate outdoor advertising signs (App. 107); and City of Miami ordinances amending Ordinance 11,000, as of April 11, 2002 (App. 189).

STATEMENT OF THE CASE

National is a subsidiary of Viacom Outdoor, Inc., the largest outdoor advertising company in the United States. (D2/9/1-3).¹ National operates more than 40 outdoor advertising signs in the City of Miami (D2/9/5), each of which is located on private property leased by National. (D2/9/6). When National leases private property, it obtains the right to erect and maintain outdoor advertising signs containing commercial and noncommercial messages. (D1/59/18) (D2/9/6). National's signs are available to advertisers for commercial and noncommercial messages. (D2/9/7). National itself displays noncommercial messages on its signs in the City as well. (D35/22/33 & Ex. 18) (D1/9/Ex. 3-5).

¹ In the Eleventh Circuit Court of Appeals, appeals from district courts are taken on the original record without an appendix. See 11th Cir. R. 30-1. Here, the district court consolidated two cases below but entered separate final judgments in each case, and therefore citations to the record are to the district court dockets in both cases. References to No. 01-CV-3039 are by "(D1/_/_)". References to No. 02-CV-20556 are by "(D2/_/_)".